RECEIVED

Before the FEDERAL COMMUNICATIONS COMMISSION

COMMISSION MAY 7

RM-8172

Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202 )

FM Table of Assignments )
(Colonial Heights, Tennessee) )

93-28 MM Docket No. 92-28

RECEIVED

To: Chief, Policy and Rules Division

MAY 7 1993

# COMMENTS AND COUNTERPROPOSE COMAIL BRANCH

Murray Communications, permitee (File No. BPH-900220MM) of WLJQ(FM), a new FM broadcast station to operate on Channel 290A at Colonial Heights, Tennessee ("Murray"), by counsel, herewith submits its Comments and Counterproposal in response to the Commission's Notice of Proposed Rulemaking (DA 93-182), released in the above proceeding on March 17, 1993, in which the Commission proposed the substitution of Channel 290C3 for Channel 290A at Colonial Heights, Tennessee, and the modification of Murray's outstanding Construction Permit to specify operation on

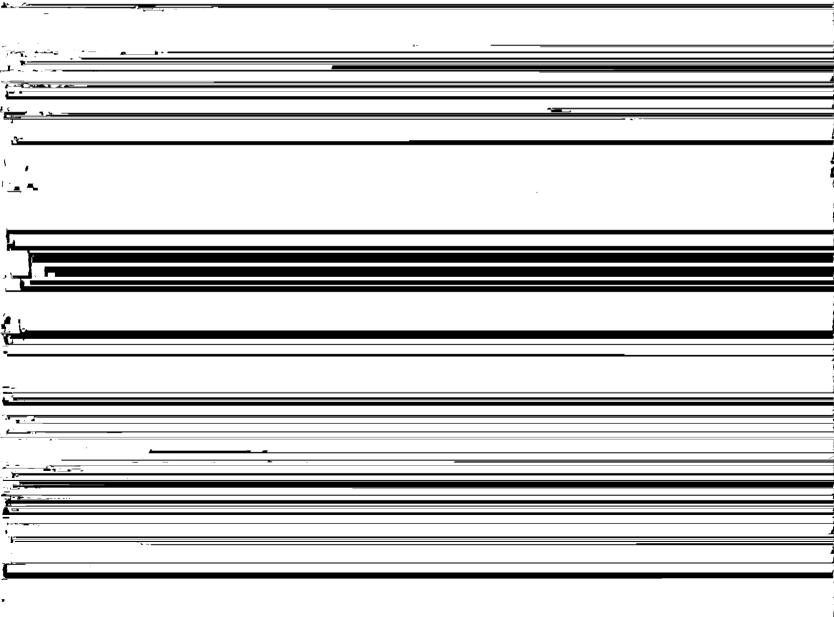
will promptly prepare and file the necessary application with the Commission and, having obtained authorization to do so, will promptly construct the facilities so authorized.

2. However, Murray has subsequently determined that Channel 240C2 is available for substitution at Colonial Heights in lieu of Channel 290C3 and respectfully requests the Commission to substitute Channel 240C2 for Channel 290A at Colonial Heights and to modify its outstanding Construction Permit, accordingly, thereby thereby amending Section 73.202 of the Commission's Rules, FM Table of Assignment, as follows:

City	,	enandad (m. m. m.) — — — — — — — — — — — — — — — — — — —	Channel	No.
Colo	nial Heights	, Tennessee	240C	2

3. As reflected in the attached Technical Report, prepared by Charles M. Anderson, the substitution of FM Channel 240C2 for 290A at Colonial Heights, Tennessee, can be made in full compliance with all applicable minimum mileage separation and other technical requirements under the Commission's Rules, utilizing certain incompatible channel swaps and the imposition of a site restriction of 16.7 kilometers, Northwest. Furthermore, the substitution of Channel 240C2 will provide for a significant increase in those areas and populations receiving primary service, reflecting an area gain of 5,889 kilometers (or 226%) and a population gain of 203,615 (or 74.5%).

4. As reflected in the attached Technical Report, the requested substitution of Channel 240C2 for Channel 290A at Colonial Heights requires: (a) the substitution of Channel 290A for 231A at Tazewell, Tennessee, and the modification of the authorized facilities of WFSM(FM), accordingly; (b) the substitution of Channel 231A for 240A at Morristown, Tennessee, and the modification of the authorized facilities of WMXK(FM), accordingly; and (c) the substitution of Channel 252A for 290A at Whitley City. Kentucky. and the modification of the authorized

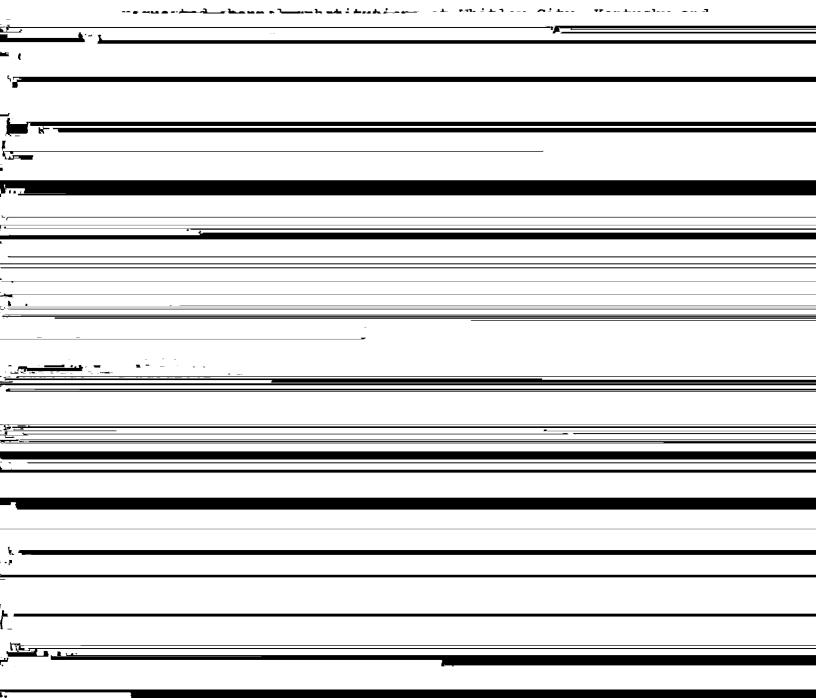


Whitley City, which will provide that station with the ability to increase power to full 6 kilowatt equivalency. As further reflected in the attached agreement, Mr. Lavender has reached an agreement with Murray regarding the manner and amount of compensation to be paid by Murray with respect to the costs incurred by WHAY(FM) in implementing the proposed change in frequency. Accordingly, only two involuntary channel substitutions will be required. In that regard, with respect to the proposed substitutions at Tazewell and Morristown, Tennessee, Murray hereby pledges to reimburse the licensees of WFSM(FM), Tazewell, and WMXK(FM), Morristown, Tennessee, for their reasonable costs incurred in implementing the proposed substitutions, consistent with Commission policy.

6. As reflected in the attached Technical Report (at pp. 3-4), the proposed substitution of Channel 240C2 for Channel 290A at Colonial Heights would result in shortspacing to the authorized facilities of WAEY-FM, Princeton, West Virginia.

However, as reflected in the attached letter agreement (Exhibit B), Betap Broadcasting, Inc., the licensee of WAEY-FM, has agreed to relocate its transmitter to the extent necessary to clear the allocation of Channel 240C2 at Colonial Heights and Murray has agreed to reimburse Betap Broadcasting, Inc.'s costs incurred in

7. Murray hereby reiterates that upon issuance of an Order, substituting either Channel 240C2 or Channel 290C3 at Colonial Heights, it will promptly prepare and file the necessary application with the Commission and, having obtained authorization to do so, will promptly construct the facilities requested and will reimburse the costs of implementing the



determine that the requested substitution of Channel 240C2 for Channel 290A cannot be implemented, Murray urges in the alternative that the Commission substitute Channel 290C3 for Channel 290A at Colonial Heights and modify its outstanding Construction Permit, accordingly. Finally, in the event the substitution of neither Channel 240C2 nor Channel 290C3 can be implemented, Murray urges in the alternative that the Commission substitute Channel 240C3 for Channel 290A at Colonial Heights and modify its outstanding Construction Permit, accordingly.

WHEREFORE, for the foregoing reasons, the Commission should amend Section 73.202 of its Rules by substituting FM Channel 240C2 for 290A at Colonial Heights, Tennessee, or in the alternative, in the event the substitution of Channel 240C2 cannot be accomplished, by substituting FM Channel 290C3 for 290A at Colonial Heights, Tennessee, and should modify the facilities currently authorized by Murray Communications' outstanding Construction Permit (File No. BPH-900220MM) accordingly.

Respectfully Submitted,

MURRAY COMMUNICATIONS

Pimothy K. Brady

Its Attorney

P.O. Box 986 Brentwood, TN 37027-0986 (615) 371-9367

May 7, 1993

#### CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that as of the May day of May, 1993, I have served a copy of the foregoing Comments and Counterproposal by First Class mail, postage prepaid upon the following:

Franklin Communications Corporation WMXK(FM)
P.O. Box 70
Morristown, TN 37815

WFSM, Inc. WFSM(FM) P.O. Box 215 Cumberland Parkway Tazewell, TN 37879

Tim Lavender
WHAY(FM)
P.O. Box 69
Whitley City, KY 42653

Henry Beam, President Betap Broadcasting, Inc. P.O. Box 5588 Princeton, WV 24740

TIMOTHY K. BRADY

EXHIBIT A

# Murray Communications 1028 Woodstone Drive

Colonial Heights, Tennessee 37663

Phone (615) 239-4745 Fax (615) 239-3283

May 5, 1993

Mr. Tim Lavender Licensee, WHAY Radio P.O. Box 69 Whitley City, KY 42653

REGEIVER

MAY 9 1993

Dear Tim:

FCC MAIL BRANCH

This letter will confirm the terms of the agreement reached during a phone conversation between myself and your representative, Dave Shelly, the General Manager of WHAY.

I am the managing partner of Murray Communications, holder of a construction permit for a new FM station at Colonial Heights, Tennessee. We would like to file a rulemaking proposal to upgrade our construction permit for Colonial Heights. Our proposal will involve a multiple station swap, including your FM in Whitley City.

We will propose to the FCC, as a part of our rulemaking, to move your station from channel 290 (105.9) to channel 252 (98.3) and increase the power allowed at the new frequency to a full 6kw class A equivalency, effectively doubling your power from your present site.

We will bear all costs of preparing and filing this proposal. In addition, in consideration for your cooperation with this proposal, we agree to reimburse the following expenses to WHAY at such time as the FCC's grant of our proposal shall become a "final order", as defined by the FCC:

- 1. Engineering costs incurred in effectuating the proposed change, not to exceed \$5,000,00
- 2. Billboard and premise sign changes, not to exceed \$1,500.00
- Costs of changing stationery and promotion of new higher-powered facility, not to exceed \$2,000.00

Thank you for your help in moving this proposal through the FCC! This should be a win-win for us both!

Please sign below to indicate your agreement with these terms, and we will file the proposal with the FCC.

Sincorety

Accepted by:

Jim Lavender

EXHIBIT B

# TECHNICAL REPORT

#### MURRAY COMMUNICATIONS

#### Requests:

COUNTERPROPOSALS TO MM DOCKET 93-28 REQUESTING UPGRADE OF WLJQ COLONIAL HEIGHTS, TENNESSEE

MAY 5, 1993

CHARLES M. ANDERSON BROADCAST CONSULTANT 1519 EUCLID AVENUE (502)781-2067

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Disclaimer: Charles M. Anderson assumes no liability for any

#### TECHNICAL REPORT

This technical report has been developed on behalf of Murray Communications, permittee of new FM facility WLJQ at Colonial Heights, TN (BPH-900220MM) on channel 290A, in support of counterproposals to MM Docket No. 93-28. Further, exhaustive analyses have conducted to determine whether alternative means were available to upgrade WLJQ. Two alternatives have been developed and are proposed herein. Both involve incompatible swaps yielding either 240C3 or 240C2 at Colonial Heights. Three frequency substitutions of existing stations are required. However, one station has consented in advance thus meeting the Commission's policy regarding two involuntary swaps for an upgrade.

Although requiring the expense of three swaps, each option has certain advantages. Channel 240C3 may be located at an existing and ideal tower site resulting in significant economies of construction and operation. Channel 240C2 offers significant population and area gains over either 240C3 or 290C3 as previously proposed.

I.

#### 240C3 UPGRADE ALLOCATION ANALYSIS

Upgrade of the Colonial Heights, TN 290A facility to 240C3 is proposed at the existing tower site of station WTFM at coordinates:

#### N 36-31-36 W 82-35-14.

The preferred reference point is located 9.66 km northwest (300.8 degrees True) from the Colonial Heights reference point (N 36-28-56 W 82-29-40). An allocation study included as Exhibit E-1 demonstrates that the proposed upgrade meets Section 73.207 clearances to all existing applications and protected rulemakings. The study also shows a considerable latitude in site selection.

The proposed upgrade will easily encompass the entire city of Colonial Heights with a 70 dBu contour. Exhibit E-2 depicts the 70 dBu from the reference point based on N.G.D.C. 30 second database and 73.333 based contours. Line of sight from the reference point is obtained to Colonial Heights.

A chain of substitutions is required to clear the 240C3 allocation. WLJQ's 290A is used in an incompatible swap for 231A at Tazewell, TN; 231A is used at the licensed site of WMXK at Morristown, TN to open channel 240 for use at Colonial Heights; and, the substitution of channel 252A for channel 290A at Whitley City, Ky is required to clear the use of 290A at Tazewell. The Whitley City licensee (WHAY) has agreed in advance to the substitution thus leaving only two involuntary swaps in accordance with Commission policy.

The 240C3 upgrade provides a total 60 dBu coverage area of 4,778 square kilometers, and a gain of 2,172 - 83.3% over the existing Class A authorization. The 60 dBu area includes

a population of 330,687; a gain of 57,547 or 21%. Populations were obtained from the Communications Data Services population program assuming a uniform 60 dBu contour of 39 km for a maximum class C3 facility. Areas were 240C3 are also required for 240C2 in addition to the WAEY-FM site relocation northeast of Princeton. Exhibit E-8 shows clearances as well as city grade coverage from the proposed WAEY arbitrary site at coordinates:

#### N 37-25-00 W 81-02-00 (7.42 km northeast).

The 240 C2 upgrade would serve an area of 8,495 square kilometers -- a gain of 5,889 sq km or 226%, and a population of 476,755 -- a gain of 203,615 or 74.5%. Populations were obtained from the Communications Data Services population program assuming a uniform 60 dBu contour of 52 km for a maximum class C2 facility. The area was calculated based on the same 52 km radius.

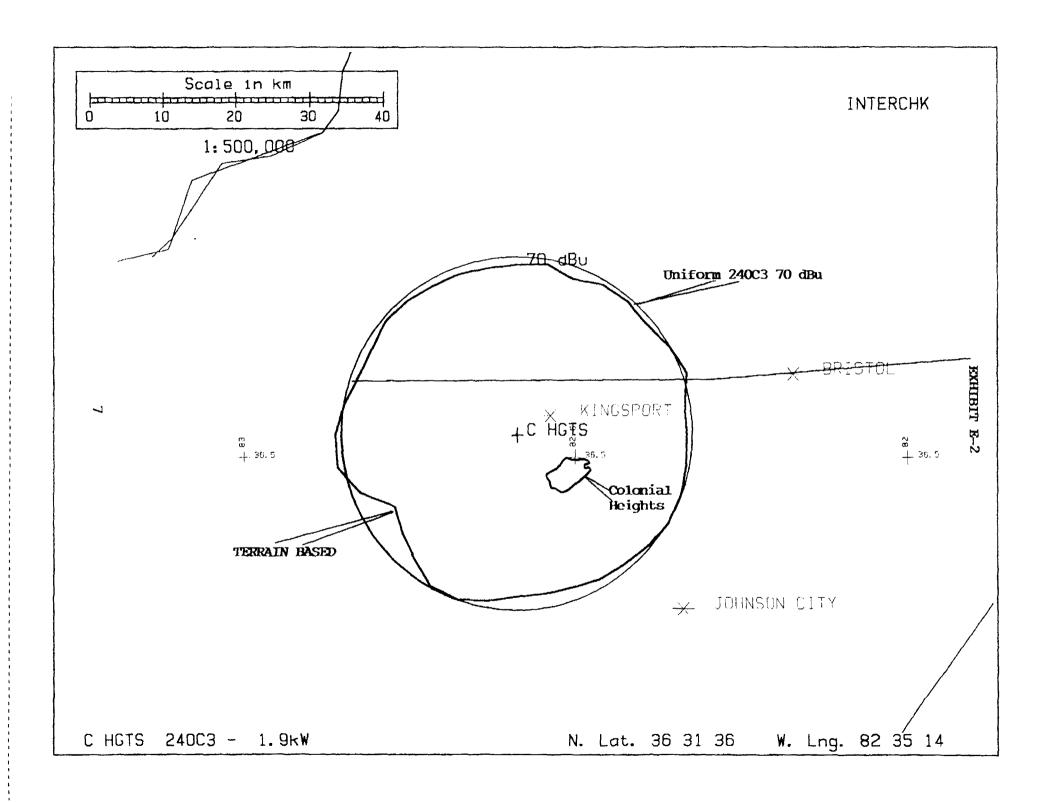
Exhibit E-7 demonstrates 70 dBu coverage of Colonial Heights based on actual terrain from the N.G.D.C. 30 second database and Section 73.333 based contours. A uniform 70 dBu is also depicted.

The upgrade is clearly an incompatible swap and mutually exclusive with the authorized facility. Therefore, no competing expressions of interest are permissible under the Commission's upgrade rules.

III. ALLOCATION SUMMARY

City	Present	Proposed	Coordinates
MM Docket No. 93-28:			
Colonial Heights, TN	290 <b>A</b>	290C3	N 36-21-11 W 82-35-24 16.7 km SW
Counterproposal I			
Colonial Heights, TN	290 <b>A</b>	240C3	N 36-31-36 W 82-35-14 9.66 km NW
Tazewell, TN	231A	290A	N 36-27-32 W 83-35-07 WFSM LI-Site
Morristown, TN	240 <b>A</b>	231A	N 36-13-40 W 83-19-58 WMXK LI-Site
Whitley City, KY	290 <b>A</b>	252A	N 36-44-39 W 84-28-37 WHAY LI-Site
Counterproposal II			
Colonial Heights, TN	290 <b>A</b>	240C2	N 36-35-35 W 82-37-16 16.7 km NW
Tazewell, TN	231 <b>A</b>	290 <b>A</b>	N 36-27-32 W 83-35-07 WFSM LI-Site
Morristown, TN	240A	231A	N 36-13-40 W 83-19-58 WMXK LI-Site
Whitley City, KY	290 <b>A</b>	252 <b>A</b>	N 36-44-39 W 84-28-37 WHAY LI-Site
Princeton, WV	240 <b>A</b>	240A	N 37-25-00 W 81-02-00 7.42 km NE

May 06 93 12:11 No.304 P.09 WKU - TECH. & TELE. TEL:502-745-5342 CHARLES ANDERSON - BROADCAST CONSULTANT 1519 EUCLID AVE. BOWLING GREEN KY 42101 Ch. 240 - Class C3 (8,D,H,M,N,O,S,V,? or key) SEARCHEM (C) 1.



# EXHIBIT E-3 MORRISTOWN, TN - WMXK SUB

REFERENCE 36 13 40 N 83 19 58 W	· · · · · · · · · · · ·		Current CHANNEL		s spac	ny ana aora aora aora aora aora -	DISPLAY DATES DATA 03-31-93 SEARCH 05-05-19			
CALL	CH#	CITY		:	STATE	BEAR'	D-KM	R-KM	MARGIN	
WFSM WIFXFM WKNFFM WMEVFM WAXM WJDJ WFBCFM WWGL.C	232A 230C 228C2 230C2 229C	Tazewell Jenkins Oak Ridg Marion Big Ston Burnside Greenvil Lexingto	e Gap		KY TN VA VA KY	318.5 28.5 246.8 65.0 27.3 315.6 152.0 97.2	34.23 111.45 80.83 176.88 85.65 143.92 140.34 275.94	106.0 72.0 165.0 55.0 106.0 95.0	-80.77 * 5.45 8.83 11.88 30.65 37.92 45.34 49.94	

# EXHIBIT E-4 WHITLEY CITY, KY - WHAY SUB

REFERENCE								DISPLA	AY DATES
36 44 39 N				CLAS	SS A			DATA	03-31-93
84 28 37 W			Current	rule	es spac	cings		SEARCH	05-05-19
			CHANNEL	252	- 98.3	8 MĤ2			
CALL	CH#	CITY			STATE	BEAR'	D-KM	R-KM	MARGIN
WHUBFM	253C2	Cookevi	lle		TN	233.1	111.07	106.0	5.07
WTFM	253C	Kingspor	ct		TN	98.1	170.73	165.0	5.73
WKQQ	251C1	Lexingto	on		KY	0.9	143.31	133.0	10.31
WDEHFM	252A	Sweetwat	ter		TN	179.3	125.46	115.0	10.46
WDEHFM	252A	Sweetwat	er		TN	176.1	129.82	115.0	14.82
AD252	252C3	Elizabet	thtown		KY	306.9	170.96	142.0	28.96
WKDOFM	254C3	Liberty			KY	327.9	73.65	42.0	31.65
AD252	252C3	Bowling	Green		KY	278.7	178.45	142.0	36.45
WKDOFM	254A	Liberty			KY	327.9	73.65	31.0	42.65
WTFM.A	253C	Kingspor	rt		TN	99.4	212.21	165.0	47.21
WXVO	254A	Oliver S			TN	172.4	80.48	31.0	49.48

## EXHIBIT E-5 TAZEWELL, TN - WFSM SUB

REFERENCE 36 27 32 N 83 35 07 W	CLASS A Current rules spacings					DATA	AY DATES 03-31-93 05-05-19		
	و همو حاله موي حال بيس ب		CHANNEL 2						
CALL	CH#	CITY	و میڈ خل <b>اء سے جب س</b> ے مصر	, , , , , , , , , , , , , , , , , , , ,	STATE	BEAR'	D-KM	R-KM	MARGIN
AD290	290C3	Colonial	Heights		TN	97.5	90.05	142.0	-51.95 *

## EXHIBIT E-5 A WFSM CLASS A SEARCH

REFERENCE		DISPLA	Y DATES
36 27 32 N		DATA	03-31-93
83 35 07 W	Current rules spacings	SEARCH	05-05-93
	CLASS A PRECLÍSIONS		~~~

	CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
221A	WUOT	220C	Knoxville	TN	212.3	59.6	165.0	-105.43 *
	AD222		London	KY	328.4	90.4	106.0	-15.57 <
	AD222		London	KY	322.0	84.5	89.0	-4.54 <
	WMIKFM		Middlesboro	KY	309.0	24.4	31.0	-6.61 <
222	WUOT	220C	Knoxville	TN	212.3	59.6	95.0	~35.43 *
	WDEFFM		Chattanooga	TN	226.9	215.1	226.0	-10.90 <
	AD222		London	KY	328.4	90.4	166.0	-75.57 *
	AD222		London	KY	322.0	84.5	142.0	-57.54 *
	WRNG	222A	Hyden	KY	13.0	81.1	115.0	-33.93 *
	WRNG.C	222A	Hyden	KY	13.0	81.1	115.0	-33.93 *
	DE222	222A	Hyden	KY	13.0	81.1	115.0	-33.93 *
	WMIKFM	224A	Middlesboro	КY	309.0	24.4	31.0	<b>-6.61 &lt;</b>
223	WUOT	220C	Knoxville	TN	212.3	59.6	95.0	-35.43 *
	AD222	222C2	London	KУ	328.4	90.4	106.0	-15.57 <
	AD222	222C3	London	КA	322.0	84.5	89.0	-4.54 <
	WYGE.C	223A	London	KY	326.7	91.0	115.0	-23.98 *
	AD223	223A	Hazard	KY	23.7	89.0	115.0	-26.00 *
	DE223	223A	London	ΚY	326.7	91.0	115.0	-23.98 *
	WESCFM		Greenville	SC	148.9	171.1	226.0	-54.89 *
	WMIKFM		Middlesboro	KY	309.0	24.4	72.0	<b>-47.61</b> *
224A	WLIQ	224A	Harriman	TN	236.7	105.9	115.0	-9.11 *
	WLIQ.C		Harriman	TN	236.6	107.1	115.0	-7.86 <
	WMIKFM		Middlesboro	KY	309.0	24.4	115.0	-90.61 *
	WNPCFM		Newport	TN	147.3	60.8	72.0	-11.23 *
225	WMIKFM		Middlesboro	KY	309.0	24.4	72.0	-47.61 *
	WNPCFM		Newport	TN	147.3	60.8	115.0	-54.23 *
			Lexington	KY	337.5	189.8	200.0	-10.18 <
	WWZZ	226A	Karns	TN	215.6	67.7	72.0	<b>-4.32</b> <
226	WMIKFM		Middlesboro	KY	309.0	24.4	31.0	-6.61 <
	WNPCFM		Newport	TN	147.3	60.8	72.0	-11.23 *
			Pikeville	KY	39.5	144.8	166.0	-21.19 <
	WWZZ	226A	Karns	TN	215.6	67.7	115.0	-47.32 <b>*</b>
227	WMIKFM		Middlesboro	KY	309.0	24.4	31.0	<b>-6.61</b> <
	WWZZ	226A	Karns	TN	215.6	67.7	72.0	<b>-4.32</b> <
	WBBOFM		Forest City	NC	137.2	179.6	226.0	-46.41 *
	WAXM	228C2	Big Stone Gap	VA	50.7	79.8	106.0	-26.24 *
228A	WLILFM		Lenoir City	TN	219.3	98.8	115.0	-16.25 *
	MXAW		Big Stone Gap	VA	50.7	79.8	166.0	-86.24 *
222	WFSM	231A	Tazewell	TN	0.0	0.0	31.0	-31.00 *
229	WAXM		Big Stone Gap	٧A	50.7	79.8	106.0	-26.24 *
	WFBCFM	229C	Greenville	sc	149.3	173.8	226.0	-52.16 *

#### CLASS A

	CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
	WFSM	231A	Tazewell	TN	0.0	0.0	31.0	-31.00 *
230	WMEVFM		Marion	VA	74.9	189.1	226.0	-36.90 *
	WJDJ		Burnside	KY	314.7	109.7	166.0	-56.26 *
		230C3	Spring City	TN	223.5	140.0	142.0	<b>-1.96 &lt;</b>
	WFSM	231A	Tazewell	TN	0.0	0.0	72.0	-72.00 *
231	WFSM	231A	Tazewell	TN	0.0	0.0	115.0	-115.00 *
			Jenkins	KY	46.3	104.6	106.0	~1.38 <
232A	WFSM	231A	Tazewell	TN	0.0	0.0	72.0	-72.00 *
	WKNFFM	232A	Oak Ridge	TN	221.9	77.2	115.0	-37.85 *
	WIFXFM	232C2	Jenkins	KY	46.3	104.6	166.0	-61.38 *
	WIKQ	235C	Greeneville	TN	117.9	90.9	95.0	-4.11 <
233	WFSM	231A	Tazewell	TN	0.0	0.0	31.0	-31.00 *
	WIFXFM	232C2	Jenkins	KY	46.3	104.6	106.0	-1.38 <
	WMUUFM	233C	Greenville	SC	147.7	199.1	226.0	-26.91 *
	WMXL	233C1	Lexington	KY	337.6	199.9	200.0	-0.11 <
	WGSQ	234C	Cookeville	TN	258.7	161.0	165.0	<b>-3.96 &lt;</b>
	WIKQ	235C	Greeneville	TN	117.9	90.9	95.0	-4.11 <
234	WFSM	231A	Tazewell	TN	0.0	0.0	31.0	-31.00 *
	WGSQ	234C	Cookeville	TN	258.7	161.0	226.0	-64.96 *
	WIKQ	235C	Greeneville	TN	117.9	90.9	165.0	-74.11 *
235	WGSQ	234C	Cookeville	TN	258.7	161.0	165.0	<b>-3.96 &lt;</b>
	WIKQ	235C	Greeneville	TN	117.9	90.9		-135.11 *
236	WIKQ	235C	Greeneville	TN	117.9	90.9	165.0	-74.11 *
	WYFC	237A	Clinton	TN	222.4	58.1	72.0	-13.90 *
237A	WIKQ	235C	Greeneville	TN	117.9	90.9	95.0	-4.11 <
	WYFC	237A	Clinton	TN	222.4	58.1	115.0	-56.90 *
	WQHY	238C	Prestonsburg	KY	28.2	155.8	165.0	-9.20 <
238	WIKQ	235C	Greeneville	TN	117.9	90.9	95.0	<b>-4.11</b> <
	WYFC	237A	Clinton	TN	222.4	58.1	72.0	-13.90 *
	WQHY	238C	Prestonsburg	KY	28.2	155.8	226.0	-70.20 *
239	WQHY	238C	Prestonsburg	KY	28.2	155.8	165.0	<b>-9.20 &lt;</b>
	WGAPFM	239A	Maryville	TN	209.5	80.0	115.0	-34.97 *
	WMXKFM	240A	Morristown	TN	138.5	34.2	72.0	-37.77 *
	WMXK	240A	Morristown	TN	138.5	34.2	72.0	-37.77 *
240A	WMXKFM	240A	Morristown	TN	138.5	34.2	115.0	-80.77 *
	WMXK	240A	Morristown	TN	138.5	34.2	115.0	-80.77 *
	WYWYFM	241C3	Barbourville	KY	328.2	53.1	89.0	-35.91 *
	WYWYFM	241A	Barbourville	KY	328.2	53.1	72.0	-18.91 *
	WXJB	243A	Harrogate	TN	2.7	13.3	31.0	-17.67 *
	WXJB.A	243A	Harrogate	TN	2.7	13.3	31.0	-17.67 *
241	WMXKFM	240A	Morristown	TN	138.5	34.2	72.0	-37.77 <b>*</b>
	WMXK	240A	Morristown	TN	138.5	34.2	72.0	-37.77 *
	WYWYFM			KA	328.2	53.1	142.0	-88.91 *
	WYWYFM		Barbourville	KY	328.2	53.1	115.0	-61.91 *
	WJBZ.C	242A	Seymour	TN	190.4	58.8	72.0	-13.25 *
	WXJB	243A	Harrogate	TN	2.7	13.3	31.0	-17.67 *